



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 16, 1997

Ms. Lilo Pomerleau
Assistant Attorney General
Consumer Protection Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR97-1408

Dear Ms. Pomerleau:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 106896.

The Advisory Commission on State Emergency Communications (the "commission"), which your office represents, received a request for a copy of "any proposals pertaining to 9-1-1 database management services received by the State of Texas over the past 60 days." In response to the request, you submitted to this office for review a copy of one proposal, which you contend is responsive to the request. You assert that the submitted information may be excepted from disclosure under section 552.110 of the Government Code. Specifically, you assert that the "third party, which has submitted the type of information to [the commission] described in the request for information, has claimed the information is confidential."¹ We have considered the exception you claim and have reviewed the documents.

Pursuant to section 552.305, we notified GTE SW, Inc. ("GTE"), whose proprietary interests may be implicated by this request for information, and provided them with an opportunity to claim that the information at issue is excepted from disclosure. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990). GTE did not respond to our notification. However, because you claim section 552.110 on the company's behalf, we will consider whether the information at issue is excepted from disclosure under section 552.110.

¹Although GTE identified the requested information as proprietary or confidential when it submitted the information to the commission, we note that, generally, information is not confidential under the Open Records Act simply because the party submitting it to a governmental body anticipates or requests that it be kept confidential. Open Records Decision No. 479 (1987).

Section 552.110 protects the property interests of private persons by excepting from disclosure two categories of information: (1) “[a] trade secret” and (2) “commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision.” This office cannot conclude that information is a trade secret unless the governmental body or the third-party has provided evidence of the factors necessary to establish a trade secret claim. Open Records Decision No. 402 (1983). Facts sufficient to show the applicability of these factors have not been provided. *See* Open Records Decision No. 363 (1983) (third party duty to establish how and why exception protects particular information). Therefore, the requested information is not excepted from disclosure under the trade secret prong of section 552.110.

We next consider whether the information at issue constitutes “commercial or financial information.” Commercial or financial information is excepted from disclosure under the second prong of section 552.110. In applying the “commercial or financial information” branch of section 552.110, this office now follows the test for applying the correlative exemption in the Freedom of Information Act, 5 U.S.C. § 552(b)(4). *See* Open Records Decision No. 639 (1996). That test states that commercial or financial information is confidential if disclosure of the information is likely either (1) to impair the government’s ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained. *See National Parks & Conservation Ass’n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974).

“To prove substantial competitive harm, the party seeking to prevent disclosure must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure.” *Sharyland Water Supply Corp. v. Block*, 755 F.2d 397, 399 (5th Cir.), *cert. denied*, 471 U.S. 1137 (1985) (footnotes omitted). You have not established that releasing the requested information would likely cause GTE to suffer substantial competitive injury. Nor have you shown that release of the information will impair the government’s ability to obtain necessary information in the future. Therefore, we conclude that the requested information is not excepted from disclosure pursuant to section 552.110.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Sam Haddad

Assistant Attorney General
Open Records Division

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Ref: ID# 106896

Enclosures: Submitted documents

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